

VIRGINIA CODE COMMISSION

Wednesday, September 24, 2008 – 10 a.m.

General Assembly Building, 6th Floor

Senate Leadership Conference Room

Richmond, Virginia 23219

MEMBERS PRESENT: R. Steven Landes, Chairman; John S. Edwards; Ryan McDougale, James F. Almand; Thomas M. Moncure, Jr.; Frank S. Ferguson; E.M. Miller, Jr.

MEMBERS ABSENT: Jane M. Roush, Robert L. Calhoun, William R. Janis

OTHERS PRESENT: Leslie Ostrander, LexisNexis; Bea McDougale; Capital Results; Michael Quinan, Christian & Barton L.L.P.

STAFF PRESENT: Frank Munyan, Elizabeth Palen, Jane Chaffin

CALL TO ORDER

Delegate Landes called the meeting to order at 10:10 a.m.

APPROVAL OF MINUTES

Senator Edwards made a motion to approve the minutes of the August meeting as written. Mr. Ferguson seconded the motion and the motion was approved.

2008 GOVERNOR'S TECHNOLOGY AWARD

Jane Chaffin reported that the Virginia Code Commission received the 2008 Governor's Technology Award in the category "Cross-Boundary Collaboration" for the electronic regulation filing system implemented in July 2007. Lilli Hausenfluck, administrative code editor and one of the project leaders, accepted the award on behalf of the Code Commission at the Commonwealth of Virginia Innovative Technology Symposium (COVITS) conference in Williamsburg on September 8. Mrs. Hausenfluck explained that this collaborative effort links the executive branch's Virginia Regulatory Town Hall with the legislative branch's Regulation Information System, providing the ability for agencies to submit regulations for publication in the Virginia Register of Regulations and codification in the Virginia Administrative Code after receiving requisite approvals by the executive branch. Additionally, the project goal of updating the online Virginia Administrative Code on the day that a regulation becomes effective was accomplished. The nomination was jointly submitted by the Virginia Code Commission, Division of Legislative Automated Systems, and Department of Planning and Budget and each of the government agencies received an award.

The Commission recognized the efforts of Ms. Hausenfluck, Ms. Chaffin and the entire Code Commission staff and congratulated them on their accomplishments and for being a national leader in government rulemaking.

ADMINISTRATIVE LAW ADVISORY COMMITTEE (ALAC) APPOINTMENT

Elizabeth Palen advised the members that Jim Guy, who served on ALAC in his capacity as chair of the Administrative Law Council Section of the Virginia Bar Association, submitted his resignation. Mr. Guy is stepping aside so that the current Administrative Law Council Section

1 chair, Michael Quinan, can be appointed. The Commission unanimously approved the motion by
2 Senator Edwards and seconded by Mr. Ferguson to appoint Michael Quinan to ALAC.

3 **REVISION OF TITLE 6.1, BANKING AND FINANCE**

4 Mr. Miller addressed the Commission prior to beginning with the title revision. Mr. Miller
5 advised members that the revision of Title 6.1 can be completed in time to introduce legislation
6 at the 2009 General Assembly Session; however, he asked if the Commission wanted to
7 introduce the legislation during a short session, which provides less time for review and
8 consideration. Also, Mr. Miller stated that the banking industry professionals are stretched quite
9 thin right now, given the current climate and difficulties of the banking and mortgage industries.
10 For these reasons, Mr. Miller made a motion, seconded by Mr. Moncure, to place the approved
11 chapters of the title revision on the Internet for comment and to finalize the title revision next
12 year by July 1. Mr. Miller indicated that he expected that the Commission would also begin work
13 on another title revision next year while finalizing the revision of Title 6.1. The motion was
14 approved.

15 Mr. Munyan went over an issue from a previous meeting concerning violations found in the Wet
16 Settlement Act that provide for a misdemeanor by indictment. Staff reported on the history of
17 this provision at the last meeting and was instructed to check with Butch Davies who sponsored
18 the legislation and to see if there is a history of any criminal charges under this provision. Butch
19 Davies told staff that the misdemeanor by indictment provision was not part of his original
20 legislation, but the bill was amended to add the language during the course of the legislative
21 process. Staff checked with the Criminal Sentencing Commission and found no indictments or
22 convictions with respect to this measure since 1998 when the provision became effective.

23 The Commission decided to retain the misdemeanor by indictment provision since removal of
24 the language would be considered a substantive change.

25 Mr. Munyan stated that he is waiting for comments from the work group and interested parties
26 about merging the Consumer Real Estate Settlement Protection Act and the Real Estate
27 Settlement Agent Registration Act, which were discussed at a previous meeting. He indicated
28 that he would bring the issue back before the Commission after comments are received.

29 Chapter 1, General Provisions

30 The attorney general's office suggested shortening the reference to the State Corporation
31 Commission's rules of practice and procedure throughout the title, which has been done by
32 definition.

33 The Commission discussed the proposal to define "person" in this title. Reservation was
34 expressed by members to define "person" since a definition exists in Title 1 that applies
35 throughout the entire Code of Virginia. Mr. Munyan explained that the definition in Title 1 does
36 not include the term "entity," which has been included in the Title 6.2 definition. The
37 Commission decided to revisit the issue at a later time.

38 Mr. Munyan advised that the working group is split on the proposed amendment to subdivision B
39 3 of § 6.2-101 (§ 6.1-1.1), which is intended to address language in current clause (ii) that only
40 addresses entities that have a board of directors. No opposition to the proposed amendment was

1 voiced by Commission members. In subdivision 5, staff will change "any court of competent
2 jurisdiction" to "the appropriate court."

3 Chapter 2, Money and Currency

4 Mr. Munyan explained changes proposed in Chapter 2. No additional changes were made by the
5 Commission.

6 Chapter 6, Deposits and Accounts

7 In § 6.2-600 (§ 6.1-2.9:2), staff pointed out that there is no penalty for intentional failure to
8 comply with the section, which deals with checks on consumer deposit accounts indicating the
9 date that the account was opened. Mr. Moncure questioned the reference in subsection A to
10 "natural person." Staff replied that the reference should be changed to "individual."

11 On page 3, line 57, § 6.2-602 A 1 (§ 6.1-2.9:7), staff will change "a court of competent
12 jurisdiction" to "appropriate court."

13 The Commission discussed whether the proposal to move language from lines 57 and 58 to lines
14 53 and 54 changes the substance. Staff indicated that the intent of the change is to clarify that
15 service of a notice of lien under § 8.01-502 exempts an institution from complying with either
16 subdivision 1 or 2. Mr. Munyan stated that he will double check the genesis of the change and
17 will bring the issue back before the Commission.

18 Senator McDougle questioned whether adding the language "authorized to accept deposits" on
19 line 97 of page 4 in § 6.2-604 (§ 6.1-125.1) changes the applicability of the section. Staff stated
20 that the language is intended to clarify the types of accounts handled by a financial institution as
21 referenced on line 92 in the definition of "account."

22 Beginning in subsection D of § 6.2-606 (§ 6.1-125.3), Mr. Munyan pointed out a paragraph
23 numbering error and indicated that subdivision 5 of subsection D would be changed to
24 subsection E and that the remaining subsections would be relettered accordingly.

25 During the discussion of § 6.2-608 (§ 6.1-125.5) on page 10, staff was asked to change "the
26 death of the sole trustee" to read "the death of the last trustee" on line 262.

27 Mr. Munyan explained that the language in § 6.2-611 (§ 6.1-125.8) on lines 300 and 301 will
28 replace the language after "shall not" on lines 296 through 299. Senator Edwards stated that the
29 language is unclear. The intent of the section is to pay expenses as itemized in the section if there
30 are no other assets from the estate. After further discussion, the Chairman asked Mr. Munyan to
31 work with the industry to clarify the language.

32 Senator McDougle questioned the added language "shall not apply to withdrawals permitted by
33 the" on line 364 in subsection B of § 6.2-616 (§ 6.1-125.13). Mr. Munyan stated that the
34 language was intended to clarify to what the "protection here given" applies. After further
35 discussion, the Commission asked Mr. Munyan to work with the industry on rewriting the
36 section.

37 Chapter 16, Mortgage Lenders and Brokers

38 In § 6.2-1600 (§ 6.1-409), Mr. Munyan suggests defining "principal" as "any person who,
39 directly or indirectly, owns or controls 10 percent or greater interest in any entity." The

Commission discussed that referencing "entity" broadens the application thereby making a substantive change. There was further discussion that the change modernizes the language and could be pointed out in the executive summary of the title revision report. The consensus of the Commission is to have staff draft a separate bill to change the definition of "principal" and return the definition in this section to its original form.

Mr. Munyan noted that he would correct an error to a code section reference in the drafting note on line 98 of page 4 in § 6.2-1602.

In § 6.2-1604 (§ 6.1-413), Bond required, staff indicated that the State Corporation Commission interprets the reference to "Any person" on line 134 to mean "Any borrower" and would like the Code Commission to change the language accordingly. The Commission believes that such language modification would change the intent of the legislature and declined to make the change.

Mr. Munyan pointed to the proposed stricken language, "or his designee," on line 148 (§ 6.2-1605). He indicated that the State Corporation Commission wants to retain this language. The Code Commission decided to strike "or his designee." Mr. Munyan stated that he will also strike the phrase on line 153.

Mr. Munyan stated that the terms "office" and "place of business" are used interchangeably within the chapter. For consistency, he proposes changing the references to "office" to "place of business," but the State Corporation Commission prefers using the term "office." The consensus of the Commission was to change references to "place of business" to "office."

In § 6.2-1614, prohibited mortgage lending and mortgage brokerage practices, the Commission discussed whether the term "flipping" should be specified in subdivision 7 since "flipping" is the commonly known term for that practice. The Commission decided to add ", which practice is known as 'flipping,'" on line 337 after "interest."

The Commission asked staff to clarify the inconsistencies in subdivision A 2 of § 6.2-1622 (§ 6.1-425.1) on lines 600 through 604.

In § 6.2-1624 (§ 6.1-426), which relates to cease and desist orders, staff stated that the State Corporation Commission issues such orders, not the Bureau, therefore, without objection, Mr. Munyan will change "Commissioner" to "Commission" on page 24, line 644.

The Commission broke for lunch.

REVISION OF TITLE 6.1, BANKING AND FINANCE (continued)

The Commission reconvened at 1:25 p.m. The Chairman suggested that the Commission review Chapter 17, Payday Loans, and defer Chapter 11, Savings Institutions, until a future meeting.

Chapter 17, Payday Loans

Mr. Munyan explained that the definition of "check" refers to a "depository institution"; however, noted that the current chapter does not define "depository institution." He further stated that "financial institution" is defined within the chapter, but the term is not used. Therefore, staff proposes to change references to a "depository institution" to "financial institution"; however, Mr. Munyan pointed out that the definition of "financial institution" has a narrower meaning.

1 The Commission discussed the issue and decided to define "depository institution" and delete the
2 definition of "financial institution" in § 6.2-1700, and globally change "financial institution" to
3 "depository institution" throughout Chapter 17.

4 Mr. Munyan mentioned that references to "place of business" will be changed to "office" in this
5 chapter as reflected in the discussion of Chapter 16.

6 **OTHER BUSINESS**

7 Mr. Miller distributed a list of non-negotiable items that he suggests that the Commission require
8 in a new Code of Virginia contract. The list was provided to West and West responded that it
9 was unable to agree to the terms, but asked for the opportunity to discuss further should the
10 Commission be willing to consider alternative terms. Mr. Miller plans to meet with Lexis
11 representatives to refine points of the contract and will bring a formal plan to the October
12 meeting.

13 **PUBLIC COMMENT**

14 No one from the public came forward during the public comment period.

15 **ADJOURN**

16 Upon a motion made by Judge Almand, seconded by Mr. Ferguson, and approved by the
17 Commission, the meeting was adjourned.